IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 4022 OF 2004

1. Ramesh Waman Phadke ... Petitioners
2. Umesh Waman Phadke
vs
Giridhar Fakirchand Rathod & ors .. Respondents
..
Mr.A.M.Joshi for Petitioners
CORAM : D.G.KARNIK, J
DATE: 12TH AUGUST, 2004.

P.C.

1. Mr. Joshi who was initially appearing for both the petitioners states that the petitioner no. 2 has instructed him to not to proceed with the petition. He therefore, does not press the petition on behalf of petitioner no. 2 and proceeds only on behalf of the petitioner no. 1 who is the brother of the petitioner no.2.

2. Father of the petitioners was the original tenant. On father's death, the rent receipt was transferred in the name of the petitioner no. 2 who was residing with the father at the time of his death. The petitioner no.1 was not residing with the father and was residing at Nasik at the time of his death. Therefore, in my view, the petitioner no. 1 has not inherited the tenancy and has no right to proceed with the petition especially when the petitioner no. 2 who is the tenant does not wish to proceed with the petition.

3. Even assuming that the petitioner no. 1 has a right to proceed with the petition, I find no error in the concurrent findings of the fact recorded by the Courts below. The Courts have held that the respondent nos. 1 and 2 require the suit premises reasonably and bonafide for their own use and occupation. Finding of comparative hardship is also recorded in their favour. No perversity is shown in the said findings.

4. The petitioner no.2 has inherited the tenancy and has acquired suitable residential accommodation elsewhere and has not challenged the finding of acquisition of suitable residence.

5. Petition rejected.

6. At the request of the learned counsel for the petitioner, operation of this order is stayed for a period of eight weeks.

D.G.KARNIK, J

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